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# In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 1042

W. A. NAILLING, PETITIONER

*v.*

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT*

## BRIEF FOR THE UNITED STATES IN OPPOSITION

### OPINION BELOW

The Circuit Court of Appeals affirmed the judgment of the District Court without opinion (R. 259). The order of the Circuit Court of Appeals denying a petition for rehearing (R. 276) is reported at 124 F. (2d) 431.

### JURISDICTION

The judgment of the Circuit Court of Appeals was entered December 10, 1941 (R. 259), and the petition for rehearing (R. 260–275) was denied February 9, 1942 (R. 276). The petition for a writ of certiorari was filed March 14, 1942. The

jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. See also Rule XI of the Criminal Appeals Rules promulgated by this Court May 7, 1934.

## QUESTIONS PRESENTED

I. Whether the indictment charges an offense under Section 2554 (a) of the Internal Revenue Code. This question involves the following subsidiary questions:

A. Whether the Secretary of the Treasury has authority to delegate to the Commissioner of Internal Revenue the function of issuing order forms for the purchase of narcotics, and, if so, whether the Secretary has delegated that function to the Commissioner.

B. Whether the indictment is fatally defective for failure to allege that petitioner issued the prescriptions by means of which the sales of narcotics were made, or to name the purchaser of the drugs.

II. Whether there was substantial evidence to support petitioner's conviction.

## STATUTORY PROVISIONS AND ADMINISTRATIVE REGULATIONS INVOLVED

Section 2554 of the Internal Revenue Code (26 U. S. C. 2554) provides in part:

> (a) * * * It shall be unlawful for any person to sell, barter, exchange, or give away any of the drugs mentioned in section 2550 (a) except in pursuance of a written order

of the person to whom such article is sold, bartered, exchanged, or given, on a form to be issued in blank for that purpose by the Secretary.

* * * * *

(c) * * * Nothing contained in this section * * * shall apply—

(1) To the dispensing or distribution of any of the drugs mentioned in section 2550 (a) to a patient by a physician, dentist, or veterinary surgeon registered under section 3221 in the course of his professional practice only. * * *

The other pertinent statutory provisions and administrative regulations are set forth in the Appendix, *infra,* pp. 22–27.

## STATEMENT

On January 10, 1941, petitioner, a practicing physician, was indicted in the Western District of Tennessee on seventeen counts, each charging a violation of Section 2554 (a) of the Internal Revenue Code (R. 6–25). At his first trial the jury failed to agree on a verdict (R. 274, 276), but on April 3, 1941, after retrial, petitioner was found guilty on counts 10 to 17, inclusive, which charged sales of morphine sulphate to one Harry Dezonia (R. 25–26). Petitioner was represented by counsel but did not challenge the validity or sufficiency of the indictment by demurrer or otherwise. Nor at the trial did he make any motion for a directed verdict, or request instructions to the jury or ob-

ject or except to the charge, or raise any of the questions urged in the petition (R. 253, 259, 265–266, 269–274, 276; see also Pet. 2, 29, 36). A motion for a new trial, principally on the ground that Dezonia, a witness for the Government, was not a competent witness and that the verdict was, therefore, not supported by evidence (R. 27–30), was denied (R. 32), and petitioner was sentenced on each of counts 10 to 17, inclusive, to three years' imprisonment [1] and to pay a fine of $1,250, the sentences to imprisonment to run concurrently (R. 32–33).

On appeal, petitioner assigned as error the action of the trial court in denying his motion for a new trial and approving the verdict, the assignments alleging that the verdict was not supported by competent evidence (R. 38–40).[2] The Circuit Court of Appeals affirmed without opinion (R. 259). It stated in its judgment that the only question presented related to the sufficiency of the evidence, that there was no motion for a directed verdict at the close of the evidence, and that in such circumstances it would not consider the sufficiency of the evidence unless satisfied that there

[1] The petition erroneously states (p. 1) that petitioner was sentenced to imprisonment for five years.

[2] Petitioner also assigned as error the action of the trial court in permitting the prosecuting attorney to question him concerning a prior compromise settlement between him and the Bureau of Narcotics (R. 39), but that assignment is not renewed here.

had been a miscarriage of justice. It concluded that the proof "amply" supported the verdict and that no injustice had been done (R. 259.)

In his petition for rehearing in the Circuit Court of Appeals (R. 260–275) petitioner raised for the first time the questions now urged in the petition for a writ of certiorari, as is conceded (Pet. 2). The court held in its order denying the petition for rehearing that the Secretary of the Treasury is authorized by statute to delegate, and has delegated, authority to the Comissioner of Internal Revenue to issue order forms for the purchase of narcotic drugs and that, therefore, the allegation of each count that the sale was not made pursuant to a written order on a form issued by the Commissioner was sufficient under the statute. The court also held that the indictment was sufficiently definite to apprise petitioner of the charge against him and to operate as a bar to a second conviction for the same offense, and that no miscarriage of justice was shown by the record (R. 276).

The evidence relating to the charges of the counts under which petitioner was convicted may be summarized as follows:

Dezonia, a drug addict (R. 107), had known petitioner for about 25 years (R. 108), and prior to June 1940 had obtained morphine prescriptions from him for $1.00 each (R. 111). On June 1, 1940, Dezonia went from Fulton, Tennessee, where

he was then working (R. 107), to petitioner's office in Union City for the sole purpose of obtaining morphine (R. 108).[3] Petitioner gave him a prescription for 20 one-quarter grain tablets of morphine sulphate, for which Dezonia paid petitioner $1.00 (R. 109; see also R. 84). Again on June 3, 4, 5, 6, 7, 8, and 9 Dezonia obtained prescriptions from petitioner for identical amounts of morphine sulphate, paying petitioner $1.00 for each prescription (R. 109–111; see also R. 42–43, 84–86). Dezonia had each prescription filled at a drug store the same day it was issued (*ibid.*), and administered the drug to himself with his own hypodermic equipment (R. 109–110).

The druggist reported these prescriptions to the mayor of Union City (R. 86) and on June 9, the date when the last prescription was filled, the mayor took Dezonia into custody as he was leaving the drug store (R. 86–87, 111). An agent of the Bureau of Narcotics was called in and procured a statement from Dezonia. Thereafter, the Bureau conducted an investigation which culminated in the indictment of petitioner (R. 118–122; see also R. 55–69).

During the period that he obtained the prescriptions from petitioner, Dezonia was not suffering from any disease other than drug addiction

[3] Dezonia was unable to get morphine in Fulton because his family had induced the doctors and druggists there not to issue and fill prescriptions for him (R. 111).

(R. 108, 109, 115).[4] This was such that when he was "on" the drug he would suffer if deprived of it, but would not become desperate or unable to look after his business (R. 113). When he went to petitioner on June 1, 1940, he was suffering the characteristic pains of an addict deprived of drugs and he so advised petitioner (R. 115, 116). When he obtained morphine every day he suffered no pain (R. 115).

Petitioner admitted that he knew Dezonia was an addict (R. 161, 169) and that he did not prescribe the morphine with the object of treating or curing the disease (R. 171–172). He had, in fact, never given Dezonia any medicine or treatment other than his morphine "requirements" (R. 196–197; see also R. 111). Petitioner's explanation of his actions was that he felt "compassion" for Dezonia and gave him morphine to relieve the suffering that accompanies deprivation and to sustain Dezonia so that he could work (R. 161–162, 171–172, 197). He also said that whenever Dezonia came to him he knew Dezonia needed the drug (R. 172) and that he knew Dezonia's "condition and requirements" (R. 161).

Despite this knowledge petitioner noted on the prescriptions that the drug was "for enteritis" or "for sciatica." He also entered directions for

[4] Though Dezonia had sinus trouble (R. 108, 109), he was not affected by it at this time (R. 115), and petitioner had never treated him for it (R. 196–197).

self-administration "as needed" or at specified intervals of time (R. 42–43, 84–86). Though he stated at one point on cross-examination that Dezonia had enteritis and sciatica (R. 198), he did not claim that he was treating Dezonia for these or any other ailments or that he prescribed the morphine for purposes of treatment (see R. 161–162, 171–172, 196–197, 198–199, 199–200). On the contrary he admitted that he gave Dezonia "only his requirements of morphine" (R. 197). When asked why he did not write "drug addiction" on the prescriptions, petitioner said that he never did so (R. 198–199). Dezonia did not have either sciatica or enteritis, nor did he tell petitioner the contrary (R. 108–110, 115).

There was, in addition, expert medical testimony that it was bad medical practice and not treatment to deliver daily to an addict for self-administration the amount of morphine required to keep him comfortable,[5] and that proper treatment calls for

[5] Though petitioner claims (Pet. 12–13, 17) that expert witnesses in his behalf testified to the contrary (R. 235, 239), their testimony was so qualified as to present no substantial conflict (see R. 235, 237, 239, 243–244, 248–249). One of these doctors had no experience in treating addicts (R. 238) and the other, Dr. Fitts, who had prescribed morphine for Dezonia on prior occasions (R. 240), admitted that he had not given it in the amounts and for the length of time that petitioner had (R. 243) and that he did not consider Dezonia a patient (R. 248). He also testified that he would not prescribe for an addict indefinitely (R. 244, 247–248) and that he would not regard as a patient one who is given a large amount of narcotics daily (R. 248). Such a person, he said, needs institutional care (R. 241, 244, 248).

reduction of the dosage and institutional care (R. 128, 132, 135–136, 142–143).

ARGUMENT

Petitioner contends, in substance, first, that the indictment does not charge an offense under the statute; and, secondly, that the evidence does not show a violation of the statute, or, if it does, that the statute is unconstitutional. Since these contentions admittedly were raised for the first time on petition for rehearing in the court below and since no exceptional circumstance is shown, they are of the kind ordinarily not considered as grounds for reversal of the verdict of the jury. *United States* v. *Atkinson*, 297 U. S. 157. Application of this rule would seem particularly appropriate in the present case since petitioner's contentions do not go to the fairness of the conduct of the proceeding. His objections to the indictment are of a technical character, and likewise, the construction of the statute urged in his second contention, if correct, might have been charged to the jury if a request had been made.

I

A. Petitioner assails the indictment principally upon the ground that it alleges that the sales were not made in pursuance of written orders of the purchaser on forms "issued in blank for that purpose by the Commissioner of Internal Revenue"

(see, e. g., R. 16), whereas the statute prohibits sales not in pursuance of written orders on forms "issued in blank for that purpose by the Secretary" of the Treasury (I. R. C., § 2554 (a), *supra,* pp. 2–3). He argues that this difference is fatal, as was true of the comparable difference in *Fleisher* v. *United States,* 302 U. S. 218, because (1) the Secretary has no statutory power to delegate the authority to issue such forms to the Commissioner of Internal Revenue, but only to the Commissioner of Narcotics; (2) the Secretary has delegated that authority to the Commissioner of Narcotics and not to the Commissioner of Internal Revenue; and (3) in any event, the delegation to the Secretary of authority to empower a subordinate to issue forms is an unconstitutional delegation of legislative power. (Pet. 7–9, 14–15, 31–35.) None of these contentions has merit.

(1) The Secretary has statutory authority to delegate to the Commissioner of Internal Revenue the function of issuing order forms. The first sentence of Section 2 of the original Harrison Narcotic Act of December 17, 1914 (38 Stat. 785, 786) read substantially as does the present Section 2554 (a) of the Internal Revenue Code, except that it required that the form was "to be issued in blank for that purpose by the Commissioner of Internal Revenue." The Act of March 3, 1927 (44 Stat. 1381), created the Bureau of Prohibition

in the Treasury Department. Section 4 (a) of that act (Appendix, *infra*, p. 22) transferred to the Secretary of the Treasury "The rights, privileges, powers, and duties conferred or imposed upon the Commissioner of Internal Revenue * * * by any law in respect of the taxation, importation, exportation, transportation, manufacture, production, compounding, sale, exchange, dispensing, giving away, possession, or use of beverages, intoxicating liquors, or narcotic drugs." Section 4 (b) (Appendix, *infra*, p. 22) authorized the Secretary to confer any of such powers and duties upon the Commissioner of Prohibition, but also authorized him "to confer or impose upon the Commissioner of Internal Revenue * * * any of such rights, privileges, powers, and duties, which, in the opinion of the Secretary, may be necessary in connection with internal revenue taxes."

The Act of June 14, 1930 (46 Stat. 585) established the Bureau of Narcotics and in Section 3 (b) (Appendix, *infra*, p. 23) authorized the Secretary of the Treasury to confer upon the Commissioner of Narcotics "any of the rights, privileges, powers, and duties in respect of narcotic drugs enumerated in" Section 4 (a) of the Act of March 3, 1927. It is upon this provision that petitioner pitches his contention that the Secretary is not authorized to delegate to the Commissioner of Internal Revenue the power to issue order forms (Pet. 34–35). However, the Secretary's power under Section 4

(b) of the Act of March 3, 1927, to delegate to the Commissioner of Internal Revenue his powers and duties in connection with taxes on narcotics was left unimpaired, and was in turn incorporated in the Internal Revenue Code as Section 2606, which provides:

> The Secretary is authorized to confer or impose any of the rights, privileges, powers, and duties in respect of narcotic drugs conferred upon him by subchapters A and B of this chapter and part V of subchapter A of chapter 27 upon the Commissioner of Narcotics, or any officer or employee of the Bureau of Narcotics, and to confer or impose upon the Commissioner of Internal Revenue, or any of the officers or employees of the Bureau of Internal Revenue, any of such rights, privileges, powers, and duties which, in the opinion of the Secretary, may be necessary in connection with internal revenue taxes.

It is clear, therefore, that between 1927 and 1930 the Secretary was authorized to delegate his powers and duties incident to the administration of laws relating to narcotics to the Commissioner of Prohibition, and after 1930 to the Commissioner of Narcotics. It is equally plain that at all times since the passage of the Act of March 3, 1927, the Secretary has had authority to confer upon the Commissioner of Internal Revenue his powers and duties connected with the administration and collection of internal-revenue taxes on

narcotic drugs. The issuance of order forms facilitates the enforcement of the taxing provisions of the statute. Cf. *United States* v. *Doremus,* 249 U. S. 86, 94–95; *Nigro* v. *United States,* 276 U. S. 332, 345–346. Therefore, the Secretary's authority to delegate to the Commissioner of Internal Revenue his powers and duties "in connection with internal revenue taxes" comprehends authority to delegate the power to issue order forms.

(2) The Secretary has delegated authority to issue forms to the Commissioner of Internal Revenue. In Treasury Decision No. 3999 (Appendix, *infra,* p. 23), issued on March 18, 1927, the Secretary set up the Bureau of Prohibition and, pursuant to his authority under Section 4 (b) of the Act of March 3, 1927 (*supra,* p. 11), ordered that the "Commissioner of Internal Revenue will *issue* * * * all internal-revenue stamps of every class pertaining to * * * narcotics, including narcotic order forms." [Italics supplied.] On April 1, 1927, the Secretary, pursuant to his powers under Section 4 (b) of the Act of March 3, 1927, issued Treasury Decision 1 (Appendix, *infra,* p. 24), which conferred upon the Commissioner of Prohibition specified powers and duties relating to the administration of the Harrison Narcotic Act which previously had been exercised by the Commissioner of Internal Revenue, but which were transferred to the Secretary by Section 4 (a) of

the Act of March 3, 1927. Among the powers so conferred upon the Commissioner of Prohibition was "The *prescribing* of forms and order forms under any of the above acts." [Italics supplied.] However, Section VIII of this decision delegated to the Commissioner of Internal Revenue various rights, privileges, powers and duties of the latter which were transferred to the Secretary by Section 4 (a) of the Act of March 3, 1927, including those "relating to internal-revenue taxes" not involving violations of laws under the Eighteenth Amendment. Thus, while the duty to *prescribe* forms was delegated to the Commissioner of Prohibition, the authority to *issue* forms conferred on the Commissioner of Internal Revenue by Treasury Decision No. 3999 was confirmed in the general delegation of authority to the Commissioner of Internal Revenue contained in Section VIII of Treasury Decision 1.

Treasury Decision 2 (Appendix, *infra,* p. 25), issued July 1, 1930, and based upon Section 3 (b) of the Act of June 14 of that year and upon Section 4 (b) of the Act of March 3, 1927, transferred the specific powers and duties of the Commissioner of Prohibition relating to narcotic drugs to the Commissioner of Narcotics. It also continued the delegation made to the Commissioner of Internal Revenue by Treasury Decision 1. The delegation of powers and duties authorized by Section 2606 of the Internal Revenue Code (*supra,* p. 12) was accom-

plished by Treasury Decision No. 4884 (Appendix, *infra,* p. 26), issued on February 11, 1939. This decision made applicable to the provisions of the code all prior decisions and regulations issued under laws which were superseded by the code.

This series of administrative regulations makes clear that the authority to issue order forms originally conferred by the Harrison Narcotic Act upon the Commissioner of Internal Revenue and transferred to the Secretary by the Act of March 3, 1927, has, since the promulgation of Treasury Decision No. 3999 on March 18, 1927, been vested by the Secretary in the Commissioner. We are advised by the Treasury Department that it has given its regulations this construction, and that pursuant to them the Commissioner has always exercised the function of issuing forms. This official interpretation and practice is entitled to weight. Cf. *Norwegian Nitrogen Products Co.* v. *United States,* 288 U. S. 294, 315; *United States* v. *American Trucking Associations,* 310 U. S. 534, 539.

(3) The delegation to the Secretary of the power to authorize the Commissioner of Internal Revenue to issue order forms is not an unconstitutional delegation of legislative power, as petitioner contends (Pet. 7–8, 9, 14–15). Section 2554 (a) of the Internal Revenue Code (*supra,* p. 2) explicitly defines the Congressional policy that sales may be made only pursuant to order forms and that a sale not so made shall be an offense. The

function of issuing such forms is a mere detail in the effectuation and administration of that policy which Congress may authorize the Secretary to delegate to a subordinate. See *Whitcombe* v. *United States*, 90 F. (2d) 290, 293 (C. C. A. 3), certiorari denied, 302 U. S. 759; *Czarnecki* v. *United States*, 95 F. (2d) 32, 33–35 (C. C. A. 3); *United States* v. *Dibella*, 28 F. (2d) 805, 806 (C. C. A. 2), certiorari denied, 278 U. S. 658. Cf. *United States* v. *Grimaud*, 220 U. S. 506.

B. Petitioner contends (Pet. 7, 30–31) that the indictment is fatally defective in not designating the purchaser of the drugs alleged to have been sold, and in failing to allege that petitioner issued the prescriptions by means of which the sales were made.[7] However, each count alleges that on or

[7] Petitioner also argues that the allegation in the indictment that he was a "physician dispenser" is, under *Young* v. *United States*, No. 86, this Term, decided February 2, 1942, equivalent to an allegation that he was a vendor and not a practicing physician, and that, since there was no evidence that he filled any prescriptions or directly sold narcotics, he was convicted of a crime not charged (Pet. 18, 30). The indictment, however, charged petitioner with sales by means of purported prescriptions not in the course of his professional practice only, and it is settled that such allegations charge an offense under the statute. *Jin Fuey Moy* v. *United States*, 254 U. S. 189, 192; see also *Linder* v. *United States*, 268 U. S. 5, 18, 19–22; *United States* v. *Behrman*, 258 U. S. 280, 287; *Webb* v. *United States*, 249 U. S. 96, 99. Read in its context the term "physician dispenser" used in the indictment is merely an occupational description of petitioner as a physician dispensing narcotics. Such use of the term is consistent with the holding in the *Young* case where

about a specified date petitioner, "at Union City, Obion County, Tennessee, * * * a physician dispenser in opium, morphine, * * * did * * * sell * * * approximately five (5) grains of morphine sulphate, * * * the said sale * * * being accomplished by means of a purported prescription dated June * * * 1940, for Harry Dezonia, calling for the amount of morphine sulphate set out above" (R. 16–25). Fairly read, this clearly means that petitioner issued the prescriptions and that Dezonia was the purchaser. The record contains no indication that petitioner had any doubt as to this meaning at the trial, and he cannot show that the alleged defects in any way prejudiced his defense. They were at most formal in nature and may not now be urged as grounds for reversal. 18 U. S. C. 556; *Hagner* v. *United States,* 285 U. S. 427, 430–433; *United States* v. *Behrman,* 258 U. S. 280, 288; *United States* v. *Goldsmith,* 108 F. (2d) 917, 920–921 (C. C. A. 2), certiorari denied, 309 U. S. 678.[8]

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this Court said that "The word 'dispense' is evidently used in Section 2 (a) [I. R. C., § 2554 (c) (1)] in a sense broad enough to include personal administration of drugs by an attending doctor."

[8] In *Miller* v. *United States,* 288 Fed. 816 (C. C. A. 5), cited by petitioner (Pet. 30), the indictment failed to specify the place at which the sale was made, as well as the purchaser, and was not sufficiently specific to distinguish the sale charged from several other sales made on the same date.

## II

Petitioner contends that the "undisputed evidence" does not establish a violation of the statute and that if the statute is construed as applicable to his conduct it constitutes a regulation of the practice of medicine in violation of the Tenth Amendment (Pet. 9–13, 15–16, 23, 36–39, 45). He also argues that the statute permits a physician to prescribe narcotics in treating an addict in the course of his professional practice, but does not establish standards for measuring the quantities which may be prescribed. He asserts that the statute is, therefore, indefinite because it leaves the question of the physician's good faith to be determined by the jury upon a choice between conflicting opinions of medical experts as to what constitutes proper practice (Pet. 9–10, 13, 17, 24, 37–39, 47–58).

These contentions are grounded upon petitioner's version of the evidence that his conduct was in good faith in the course of his professional practice only. This, however, was a question of fact for the jury (*Linder* v. *United States,* 268 U. S. 5, 18), and its verdict against petitioner is fully supported by the evidence summarized in the Statement (*supra,* pp. 5–9), which shows that no *bona fide* physician-patient relationship existed between petitioner and Dezonia.

Petitioner never gave Dezonia any medicine or treatment other than morphine. Dezonia's only affliction was that he was an addict and there is

no evidence or contention that petitioner attempted to cure his addiction. It was Dezonia's appetite, not the professional judgment of petitioner, that determined when and in what quantities the drug would be provided. Petitioner accepted Dezonia's request as sufficient proof that a prescription should be issued, and petitioner never hesitated to issue a prescription with the false notation "for enteritis" or "for sciatica" when Dezonia came to him. Thus, while it may be conceded that Dezonia was suffering pain when he went to petitioner, and that the morphine prescribed by petitioner relieved him, there were other circumstances from which the jury was justified in concluding that petitioner was not acting in good faith and in the course of his professional practice only.

In *Linder* v. *United States,* 268 U. S. 5, upon which petitioner chiefly relies, the indictment, unlike that here, did not question the defendant's good faith or allege that the dispensation of the drugs was not in the course of professional practice, and the facts disclosed no conscious design to violate the law (268 U. S., at 17).[9] Though it was held in that case that a physician may, if he acts

[9] It should be noted, too, that the amount of drugs prescribed in the *Linder* case was one tablet of morphine and three tablets of cocaine (268 U. S., at 11), whereas here petitioner gave Dezonia 160 one-quarter grain tablets of morphine sulphate over a period of nine days (*supra*, p. 6). Cf. *Boyd* v. *United States*, 271 U. S. 104, 105.

*bona fide,* give an addict moderate amounts of drugs for self-administration in order to relieve conditions incident to addiction (268 U. S., at 22), the decision makes clear that the good faith of the physician is the determinative issue of fact (268 U. S., at 18). See also *Boyd* v. *United States,* 271 U. S. 104, 105–106; *Heller* v. *United States,* 104 F. (2d) 446, 447–448 (C. C. A. 4); *Hawkins* v. *United States,* 90 F. (2d) 551, 554–555 (C. C. A. 5), certiorari denied, 302 U. S. 733. Here the jury must be understood to have determined that issue against petitioner,[10] and its verdict was approved by the trial court upon motion for a new trial, and by the court below.

Since the jury found against petitioner on the issue of *bona fide* professional practice, no question of the validity of the statute as a regulation of the practice of medicine is involved. *Linder* v. *United States, supra;* see also *Boyd* v. *United States, supra.* Petitioner's contention that the statute, as applied to physicians, is void for indefiniteness is equally unavailing. The require-

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[10] The trial court's charge to the jury is not included in the bill of exceptions, and the bill expressly states that there were no exceptions to the charge and no special requests for instructions (R. 253). It must therefore be assumed that the court fully and correctly instructed the jury upon the law of the case. Cf. *Hall* v. *United States,* 48 F. (2d) 66, 68 (C. C. A. 9); *Kanner* v. *United States,* 34 F. (2d) 863, 867 (C. C. A. 7); *Brown* v. *United States,* 32 F. (2d) 953, 954 (App. D. C.); *Harrod* v. *United States,* 29 F. (2d) 454, 455 (App. D. C.).

ment of the physicians' exemption that narcotics may be dispensed or distributed to a "patient * * * in the course of * * * professional practice only" is sufficiently definite to apprise the professional of prohibited activities. *Gorin* v. *United States,* 312 U. S. 19, 27–28; *Connally* v. *General Construction Co.,* 269 U. S. 385, 391.

CONCLUSION

The case was correctly decided below and there is no conflict of decisions. We therefore respectfully submit that the petition for a writ of certiorari should be denied.

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APRIL 1942.